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15 Properties, LLC

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18
19 COLONY COVE PROPERTIES, LLC,
a Delaware limited liability company,

20 Plaintiff,

21
22 v.

23 CITY OF CARSON, a municipal
corporation; CITY OF CARSON
24 MOBILEHOME PARK RENTAL
REVIEW BOARD, a public
25 administrative body; and DOES 1 to 10,
26 inclusive,

27 Defendants.
28

Case No. CV 14-03242 PSG (PJWx)

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION IN
LIMINE NO. 1 TO EXCLUDE
EVIDENCE AND ARGUMENT
REGARDING MOBILEHOME
PARK CONVERSIONS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing: April 5, 2016 at 9:00 a.m.
Courtroom: 880
Judge: Hon. Philip S. Gutierrez
Trial Date: April 5, 2016

1 **TO DEFENDANTS AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 5, 2016 at 9:00 a.m., Plaintiff
3 Colony Cove Properties, LLC (“Colony Cove”) will and hereby does move for the
4 exclusion of evidence on the basis of Federal Rules of Evidence 401, 402, 403, and
5 701. Plaintiff believes in good faith that Defendants City of Carson and City of
6 Carson Mobilehome Park Rental Review Board intend to offer into evidence during
7 trial, set to begin on April 5, 2016, arguments and evidence regarding Colony
8 Cove’s supposed intention, at the time it purchased the mobilehome park at issue
9 (the “Park”), to convert the Park from a rental mobilehome park to a condominium-
10 style resident-owned park.

11 This Motion is made on the grounds that there is no evidence Colony Cove
12 purchased the Park in 2006 with the intention to convert it to a condominium
13 ownership-style park anytime in the foreseeable future. In fact, to date, Colony
14 Cove has not converted the Park to resident ownership. Further, whether Colony
15 Cove intended to convert the Park when it purchased the Park is irrelevant, and any
16 marginal probative value is substantially outweighed by the dangers of unfair
17 prejudice, confusing the issues, and wasting time. None of the experts in the case
18 offered by either party are providing any opinions or valuations based on the
19 supposed conversion of the Park from a rental facility to a resident-owned park.

20 This Motion is based on this Notice of Motion, the Memorandum of Points
21 and Authorities, the Declaration of Matthew W. Close and the exhibits attached
22 thereto, the files in this action, and such additional submissions and argument as
23 may be presented at or before the hearing on this Motion.

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1 This Motion is made following the conference of counsel pursuant to Local
2 Rule 7-3 which took place on February 9, 2016.

3
4 Dated: February 22, 2016

Respectfully submitted,

5 GILCHRIST & RUTTER
6 Professional Corporation

7 &

8 O'MELVENY & MYERS LLP

9 By: /s/ Matthew W. Close
10 Matthew W. Close

11 Attorneys for Plaintiff
12 Colony Cove Properties, LLC
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1 **I. INTRODUCTION**

2 Plaintiff Colony Cove Properties, LLC (“Colony Cove”) submits this motion
3 *in limine* to preclude Defendants City of Carson (“Carson”) and City of Carson
4 Mobilehome Park Rental Review Board (the “Board,” and collectively with Carson,
5 the “City”) from introducing evidence or arguments that Colony Cove purchased the
6 mobilehome park at issue (the “Park”) with the intention of converting the Park
7 from a rental mobilehome park to a condominium ownership-style park owned by
8 residents (“conversion”). The City apparently seeks to offer this argument and
9 speculation as a rationalization and justification for its two rent decisions challenged
10 in this case that required Colony Cove to operate at approximately \$2,000,000 in
11 cash losses in the first two years it owned the Park.

12 Although the City has raised the issue of the Park’s pending conversion at
13 multiple depositions, there is no evidence that Colony Cove intended to convert the
14 Park anytime in the foreseeable future when it purchased the Park in 2006, or that
15 any such intention would justify the rent decisions giving rise to this case. In fact,
16 almost ten years after its purchase, Colony Cove has not converted the Park to
17 resident ownership. Further, the City’s staff reports on the two challenged rent
18 applications never mention a conversion, and the City resolutions that unlawfully
19 denied Colony Cove the rents necessary to pay its bills also never mention
20 conversion. None of the experts designated by either party have offered any
21 opinions regarding the Park’s supposed value following a conversion or as a
22 resident-owned park. To the contrary, all the experts in the case agree that the Park
23 has been and should be valued as a rental park. The value of the Park derives from
24 its rental income and the City unconstitutionally interfered with Colony Cove’s
25 reasonable, investment-backed expectation of the rents it would be permitted to
26 charge. That is the issue for trial.

27 Any evidence and argument about conversions would be irrelevant, lack
28 foundation, and be substantially more prejudicial than probative. *See* Fed. R. Evid.

1 401, 402, 403. For these reasons, any attempt to introduce evidence or argument
 2 that Colony Cove purchased the Park with the intention of converting said Park
 3 should be excluded.

4 **II. RELEVANT BACKGROUND**

5 In April 2006, Colony Cove purchased the Park, Colony Cove Mobile
 6 Estates, for more than \$23 million. At the time, Carson's rent-control rules provided
 7 for the consideration of debt service (i.e., interest payments on a mortgage) when
 8 park owners applied for rent increases. In fact, in 2003, a Los Angeles Superior
 9 Court judge had ordered Carson to consider another park owner's debt service when
 10 setting rents because that had been the established practice in the City and was
 11 specifically provided for in the City's rent-control regulations ("Order"). Although
 12 the City did not appeal that Order (which was indisputably known to and relied on
 13 by Colony Cove when it purchased the Park), a few months after Colony Cove's
 14 purchase, the City changed its rent-control rules to provide new grounds to ignore
 15 debt service payments when setting rents. The City subsequently disallowed and
 16 ignored Colony Cove's debt service when it disposed of the two rent applications
 17 giving rise to this case. In August 2008 and again in July 2009, the City ultimately
 18 approved small rent increases that it knew would not allow sufficient income for
 19 Colony Cove to pay interest on its mortgage and operate and maintain the Park. As
 20 a result, Colony Cove was forced to operate at approximately \$2,000,000 in losses
 21 during the two years at issue in this case. This result was completely unwarranted
 22 and unforeseeable since a \$200 per month, per space rent increase would have (i)
 23 allowed Colony Cove to cover its debt service payments to its lender General
 24 Electric Capital Corporation ("GE") and (ii) resulted in rents that were both 20–25%
 25 below market levels and comparable to rents charged in other rent-controlled parks
 26 in Carson.

27 The question at issue in this litigation is whether the City committed an
 28 unconstitutional taking when it abruptly changed its rent-control rules immediately

1 after Colony Cove purchased the Park, and thus required Colony Cove to operate the
 2 Park at huge annual losses. Whether Colony Cove purchased the Park with the
 3 intention of converting the Park from a rental mobilehome park to a condominium
 4 ownership-style park is irrelevant. There is no evidence in the case about the Park's
 5 value as a resident-owned park, or even that a proper valuation of the Park requires
 6 consideration of a conversion.

7 Nevertheless, City employees who have no qualifications to appraise or value
 8 real estate have asserted during depositions that despite Colony Cove's substantial
 9 operating losses, Colony Cove could eventually profit by converting the Park to
 10 resident ownership. (*See* Ex. 5 at 130:5–9.)¹ There is no evidence to support the
 11 claim that Colony Cove purchased the Park with the intention of generating a return
 12 on its investment by converting the Park, and all of the experts agree that the proper
 13 valuation method for the Park is based on the rents it generates. And ten years after
 14 Colony Cove purchased the Park, the Park has not been converted. (*See id.* at
 15 130:10–13.) At best, the evidence suggests that Colony Cove purchased the Park
 16 with the intention of keeping its options open and *possibly* converting the Park and
 17 selling lots to residents at some uncertain future time. (*See* Ex. 4 at 98:8–100:12.)

18 For example, when Colony Cove's owner² was asked, during his December
 19 18, 2015 deposition, if he had “decided before you purchased Colony Cove Mobile
 20 Estates that you were going to file an application for subdivision of the mobile home
 21 park?,” his response was: “I had decided to file for a subdivision, ***but I had not***
 22 ***decided to proceed with the subdivision.***” (*Id.* at 98:8–14 (emphasis added).) Mr.
 23 Goldstein goes on to explain:

24 _____
 25 ¹ All exhibits are attached to the Declaration of Matthew W. Close in Support of
 Plaintiff's Motions *in Limine* Nos. 1–8.

26 ² James F. Goldstein is President of Goldstein Properties, Inc., which is a general
 27 partner of El Dorado Palm Springs, Ltd., which serves as manager of Colony Cove.
 28 For purposes of the trial and convenience of the factfinder, Colony Cove refers to
 Mr. Goldstein as the “owner” of Colony Cove.

1 I always like to have as many options available to me as
 2 possible. ***I think that in the long run, at some point, the***
 3 ***market might be at a level that warrants selling the***
 4 ***spaces, but I don't know when that is going to happen.***
 5 But I want to have the ability to sell spaces or a future
 owner to have that ability because I think it's in my better
 interest.

6 (*Id.* at 100:5–12 (emphasis added).)

7 A mobilehome park conversion does not occur until the first units are actually
 8 offered and sold. *See El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal.
 9 App. 4th 1153, 1166 (2002) (“[C]onversion occurs on the date that the first
 10 subdivided unit is sold.”); *see also Pac. Palisades Bowl Mobile Estates, LLC v. City*
 11 *of Los Angeles*, 55 Cal. 4th 783, 808 (2012). An applicant obtains a land-use
 12 entitlement for conversion through local agency approval of a subdivision map
 13 application (a process which can take years, and did here). After obtaining a local
 14 entitlement, a property owner that wishes to proceed with conversion must pursue it
 15 through the California Bureau of Real Estate (“BRE,” formerly the California
 16 Department of Real Estate), which regulates the creation, marketing, and sale of
 17 condominium “airspace” units within the mobilehome park. Cal. Bus. & Prof. Code
 18 §§ 10050, 11000 *et seq.* The conversion itself does not occur until the state BRE
 19 process is completed, all requirements are met, and the first unit is sold. *See El*
 20 *Dorado*, 96 Cal. App. 4th at 1166; *Pac. Palisades Bowl*, 55 Cal. 4th at 808.

21 Mobilehome park conversions are complex, highly controversial, and the
 22 subject of numerous lawsuits. Accordingly, to the extent there is any evidence of
 23 Colony Cove’s alleged intention, in 2006, to convert the Park, the probative value of
 24 such evidence and argument is substantially outweighed by the dangers of unfair
 25 prejudice, confusing the issues, misleading the jury, and/or undue delay and wasting
 26 time.

III. THE CITY SHOULD BE PRECLUDED FROM ASSERTING COLONY COVE PURCHASED THE PARK WITH THE INTENTION OF CONVERTING IT

Evidence must be excluded if irrelevant or if its probative value is outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *See* Fed. R. Evid. 402, 403. Here, evidence or argument that Colony Cove purchased the Park with the intention, in 2006, of converting said Park is inadmissible for all these reasons.

First, whether Colony Cove purchased the Park with the intention of converting the Park is irrelevant. In takings cases, economic impact is judged at the time of the taking. *See Cane Tennessee, Inc. v. United States*, 57 Fed. Cl. 115, 124 (Fed. Cl. 2003) (“Economic impact for a takings analysis is determined by comparing the market value of the property at a moment in time just before the government action with the market value just after the government action.”) (citing *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 497 (1987)). Property appreciation in the years following a taking does not provide immunity or a defense to the government. *See Wheeler v. City of Pleasant Grove*, 833 F.2d 267, 271 (11th Cir. 1987) (rejecting district court’s conclusion that landowner suffered no compensable loss where property value increased after taking occurred because landowner should be compensated for loss in income-producing potential suffered “over the period of the temporary taking”). As such, Colony Cove’s intentions regarding a possible future use of the Park is irrelevant.

Second, whether or not Colony Cove will profit through a conversion that still has not occurred seven to eight years after the City’s rent decisions giving rise to this case is purely speculative and depends on a multitude of factors, including when the Park is converted, whether sufficient financing exists so residents can buy their lots, whether residents in fact buy their lots, and the timing at which residents buy

1 their lots. The City cannot rely on the possibility that Colony Cove may one day
2 convert the Park and profit therefrom to defeat Colony Cove's claim that the City
3 committed an unconstitutional taking when it abruptly changed its rent-control rules
4 immediately after Colony Cove purchased the Park for more than \$23 million and
5 forced Colony Cove to operate at unsustainable losses. This is precisely the sort of
6 attenuated argument Federal Rule of Evidence 403 is designed to prevent.

7 Third, there is simply no evidence that Colony Cove intended to proceed with
8 conversion anytime in the near future when it purchased the Park. The
9 uncontradicted evidence is simply that Colony Cove sought to obtain a local
10 entitlement to "keep its options open" for the future for it or for a future owner, and
11 that Colony Cove has made no effort to proceed with the state BRE regulatory
12 process necessary to convert the park, ten years after purchasing the Park and more
13 than three years after obtaining final local entitlement.

14 Finally, to the extent there is any probative value in evidence and arguments
15 regarding Colony Cove's alleged intention to convert the Park, such value is
16 substantially outweighed by the dangers of unfair prejudice, confusing the issues,
17 misleading the jury, and/or undue delay and wasting time. Introducing the subject
18 of mobilehome park conversions in this litigation would simply confuse the issues,
19 mislead the jury, and result in undue delay. It would lead to extended testimony
20 about conversions, the statutory requirements, and the various factors that might
21 impact whether or not they are profitable. And there are no expert opinions in this
22 case about the Park's supposed value if the hypothetical conversion were to occur,
23 and the appraisal experts offered by both sides in this case agree that the Park should
24 be valued as a rental park based on the rents it is permitted to charge. Accordingly,
25 lay witnesses from the City staff speculating about intentions to convert the Park
26 and profits that might be reaped are rank speculation and should be excluded.

27 Moreover, any discussion of conversions will unduly delay and prolong the
28 trial. Colony Cove's lawsuit challenges events that occurred prior to July 2009. If

1 the City is permitted to offer speculative testimony and arguments about a
2 conversion that has not occurred, Colony Cove would have no choice but to
3 introduce evidence that its subdivision map application was not approved by the
4 City until December 2012, that the map approval does not constitute conversion,
5 and, moreover, that in the intervening three years, Colony Cove has not taken any
6 steps to gain state BRE approval and sell units at the Park.

7 **IV. CONCLUSION**

8 For all the foregoing reasons, the Court should issue an order precluding the
9 City from introducing any evidence or argument regarding Colony Cove's alleged
10 intention to convert the Park or supposed profits that might be generated by a future
11 conversion.

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13 Dated: February 22, 2016

Respectfully submitted,

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15 GILCHRIST & RUTTER
Professional Corporation

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17 O'MELVENY & MYERS LLP

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19 By: /s/ Matthew W. Close
Matthew W. Close

20 Attorneys for Plaintiff
21 Colony Cove Properties, LLC
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